

APPENDIX 39—RELEVANT STATUTES, LIMITATIONS, AND GUIDELINES

The following provides a description of the authorities that apply to the selection and implementation of the management actions for the Resource Management Plan (RMP). This is not an all-inclusive list of statutes, limitations, and guidelines, but is a representative list of the types of laws and policy that guide the management of the public land. Additional laws, regulations, and policies are identified in the various appendices for specific resource programs. All laws, regulations, and policies, including Bureau of Land Management (BLM) manuals, handbooks and internal memoranda, would be followed unless otherwise stated.

ENVIRONMENTAL POLICY

The National Environmental Policy Act (of 1969) (NEPA) (42 United States Code [U.S.C.] 4321, et seq.) requires the preparation of Environmental Impact Statements (EIS) for federal projects that may have a significant effect on the environment. It requires systematic, interdisciplinary planning to ensure the integrated use of natural and social sciences and environmental design arts in making decisions about major federal actions that may have a significant effect on the environment. The procedures required under NEPA are implemented through the Council on Environmental Quality (CEQ) regulations at 40 Code of Federal Regulations (CFR) 1500.

Federal Compliance with Pollution Control Standards (Executive Order [EO] 12088) requires that federal agencies comply with applicable pollution control standards.

Protection and Enhancement of Environmental Quality (EO 11514, as amended by EO 11991) establishes the policy for federal agencies to provide leadership in environmental protection and enhancement.

LAND USE AND NATURAL RESOURCES MANAGEMENT

The Federal Land Policy and Management Act (of 1976) (FLPMA), as amended (43 U.S.C. 1701, et seq.), provides for public lands to be generally retained in federal ownership for periodic and systematic inventory of the public lands and their resources; for a review of existing withdrawals and classifications; for establishing comprehensive rules and regulations for administering public lands statutes; for multiple-use management on a sustained yield basis; for protection of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values; for receiving fair market value for the use of the public lands and their resources; for establishing uniform procedures for any disposal, acquisition, or exchange; for protecting Areas of Critical Environmental Concern (ACEC); for recognizing the nation's need for domestic sources of minerals, food, timber, and fiber from the public lands, including implementation of the Mining and Mineral Policy Act of 1970; and for payments to compensate states and local governments for burdens created as a result of the immunity of federal lands from state and local taxation. The general land management regulations are provided in 43 CFR 2000, Sub-chapter B.

The General Mining Law of 1872, as amended (30 U.S.C. 22, et seq.), provides for locating and patenting mining claims where a discovery has been made for locatable minerals on public lands in specified states. Regulations for staking and maintenance of claims on BLM-administered lands are listed in 43 CFR 3800.

The Mineral Leasing Act of 1920, as amended (30 U.S.C. 181, et seq.), provides for the leasing of deposits of coal, phosphate, sodium, potassium, oil, oil shale, native asphalt, solid and semisolid bitumen, bituminous rock or gas, and lands containing such deposits owned by the United States, including those in national forests but excluding those acquired under other acts subsequent to February 25, 1920, and those lands within the national petroleum and oil shale reserves. Regulations for onshore oil and gas leasing are provided in 43 CFR 3100.

The Federal Coal Leasing Amendments Act of 1976 (30 U.S.C. 201, et seq.) requires competitive leasing of coal on public lands and mandates a broad spectrum of coal operations requirements for lease management. Coal leasing regulations for BLM-administered lands are provided in 43 CFR 3400.

The Materials Act of 1947, as amended (30 U.S.C. 601–604, et seq.), provides for the sale of common variety materials for personal, commercial, or industrial uses and for free use for local, state, and federal governmental entities. The sales of mineral materials are controlled by the regulations listed in 43 CFR 3600.

EO 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use), signed on May 18, 2001, provides direction to appropriately weigh and consider the effects of the Federal Government's regulations on the supply, distribution, and use of energy. Agencies shall prepare and submit a Statement of Energy Effects to the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, for those matters identified as significant energy actions. A Statement of Energy Effects shall consist of a detailed statement by the agency responsible for the significant energy action relating to any adverse effects on energy supply, distribution, or use (including a shortfall in supply, price increases, and increased use of foreign supplies) should the proposal be implemented, and reasonable alternatives to the action with adverse energy effects and the expected effects of such alternatives on energy supply, distribution, and use.

The Taylor Grazing Act of 1934, as amended (43 U.S.C. 315), provides authorization to the Secretary of the Interior to establish grazing districts from any part of the public domain of the United States (exclusive of Alaska) which, in the Secretary's opinion, are chiefly valuable for grazing and raising forage crops; to regulate and administer grazing use of all public lands; and to improve the public rangelands. Regulations for grazing permits and leases are provided in 43 CFR 4100.

The Public Rangelands Improvement Act of 1978 (43 U.S.C. 1901, et seq.) provides for the improvement of range conditions on public rangelands, research on wild horse and burro population dynamics, and other range management practices.

The Federal Noxious Weed Act of 1974, as amended (7 U.S.C. 2814), provides for establishment and funding of an undesirable plant management program, completion and implementation of cooperative agreements with state agencies, and establishment of integrated management systems to control undesirable plant species.

EO 13112 (Invasive Species), signed on February 3, 1999, prevents the introduction of invasive species and provides for their control, as well as to minimize the economic, ecological, and human health impacts that invasive species cause. Under this Executive Order, federal agencies whose actions may affect the status of invasive species shall (1) identify such actions, (2) use relevant programs and authorities to prevent, control, monitor, and research such species, and (3) not authorize, fund, or carry out actions that it believes are likely to cause or promote the introduction or spread of invasive species in the United States or elsewhere.

The Wild Free-Roaming Horses and Burros Act of 1971 provides for the management, protection, and control of wild horses and burros on public lands and authorizes “adoption” of wild horses and burros by private individuals. Regulations applicable to wild horse and burro management on BLM-administered lands are provided in 43 CFR 4700.

EO 12548 provides for establishment of appropriate fees for the grazing of domestic livestock on public rangelands and directs that the fee shall not be less than \$1.35 per animal unit month.

The Wilderness Act of 1964 (16 U.S.C. 1131, et seq.) provides for the designation and preservation of wilderness areas.

AIR QUALITY

The Clean Air Act of 1990, as amended (42 U.S.C. 7401, 7642), requires BLM to protect air quality, maintain federal- and state-designated air quality standards, and abide by the requirements of the State Implementation Plans (SIP).

Wyoming Air Quality Standards and Regulations specify the requirements for air permitting and monitoring to implement Clean Air Act and state ambient air quality standards.

WATER QUALITY

The Clean Water Act of 1987, as amended (33 U.S.C. 1251), establishes objectives to restore and maintain the chemical, physical, and biological integrity of the nation’s water. The Act also requires permits for point source discharges to navigable waters of the United States and the protection of wetlands and includes monitoring and research provisions for protection of ambient water quality.

Wyoming Water Quality Regulations implement permitting and monitoring requirements for the National Pollutant Discharge Elimination System, operation of injection wells, groundwater protection requirements, prevention and response requirements for spills, and salinity standards and criteria for the Colorado River Basin.

Protection of Wetlands (EO 11990) requires federal agencies to take action to minimize the destruction, loss, or degradation of wetlands and to preserve and enhance the natural and beneficial values of wetlands.

Floodplain Management (EO 11988) provides for the restoration and preservation of national and beneficial floodplain values, and enhancement of the natural and beneficial values of wetlands in carrying out programs affecting land use.

CULTURAL RESOURCES

The Historic Sites Act (16 U.S.C. 461) declares national policy to identify and preserve historic sites, buildings, objects, and antiquities of national significance, thereby providing a foundation for the National Register of Historic Places.

The National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), expands protection of historic and archeological properties to include those of national, state, and local significance. It also

directs federal agencies to consider the effects of proposed actions on properties eligible for or included in the National Register of Historic Places.

The Archaeological Resources Protection Act of 1979, as amended (16 U.S.C. 470a, 470cc, 470ee), requires permits for the excavation or removal of federally administered archeological resources, encourages increased cooperation among federal agencies and private individuals, provides stringent criminal and civil penalties for violations, and requires federal agencies to identify important resources vulnerable to looting and to develop a tracking system for violations.

The Native American Graves Protection and Repatriation Act of 1990 (Public Law 101-601) provides a process for federal agencies to return certain Native American cultural items (e.g., human remains, funerary objects, sacred objects, and objects of cultural patrimony) to lineal descendants and culturally affiliated Native American tribes.

Protection and Enhancement of the Cultural Environment (EO 11593) directs federal agencies to locate, inventory, nominate, and protect federally owned cultural resources eligible for the National Register of Historic Places and to ensure that their plans and programs contribute to preservation and enhancement of nonfederally owned resources.

The National Trails System Act of 1968, as amended (16 U.S.C. 1241–1249), establishes a national trails system and requires that federal rights in abandoned railroads be retained for trail or recreation purposes, or sold with the receipts to be deposited in the Land and Water Conservation Fund.

HAZARDOUS MATERIALS

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601–9673), provides for liability, risk assessment, compensation, emergency response, and cleanup (including the cleanup of inactive sites) for hazardous substances. The Act requires federal agencies to report sites where hazardous wastes are or have been stored, treated, or disposed and requires responsible parties, including federal agencies, to clean up releases of hazardous substances.

The Resource Conservation and Recovery Act (RCRA), as amended by the Federal Facility Compliance Act of 1992 (42 U.S.C. 6901–6992), authorizes the Environmental Protection Agency (EPA) to manage, by regulation, hazardous wastes on active disposal operations. The Act waives sovereign immunity for federal agencies with respect to all federal, state, and local solid and hazardous waste laws and regulations. Federal agencies are subject to civil and administrative penalties for violations and to cost assessments for the administration of the enforcement.

The Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. 11001–11050) requires the private sector and federal, state, local, and tribal governments to inventory chemicals and chemical products, to report those in excess of threshold planning quantities, to inventory emergency response equipment, to provide annual reports and support to local and state emergency response organizations, and to maintain a liaison with the local and state emergency response organizations and the public.

WILDLIFE

The Endangered Species Act of 1973 (ESA), as amended (16 U.S.C. 1531, et seq.), directs federal agencies to ensure that their actions do not jeopardize threatened and endangered species, and that through their authority they help bring about the recovery of such species.

The Bald Eagle Protection Act of 1940 (16 U.S.C. 668), amended in 1962 to include the golden eagle, prohibits the taking or possession of and commerce in bald and golden eagles, with limited exceptions.

Fish and Wildlife Coordination Act of 1958 (16 U.S.C. 661 et seq.) provides that, whenever the waters or channel of a body of water are modified by a department or agency of the United States, the department or agency first will consult with the U.S. Fish and Wildlife Service and with the head of the agency exercising administration over the wildlife resources of the state where construction will occur, with a view to the conservation of wildlife resources.

Fish and Wildlife Improvement Act of 1978 (16 U.S.C. 7421) authorizes the Secretary of the Interior and the Secretary of Commerce to assist in training of state fish and wildlife enforcement personnel, to cooperate with other federal or state agencies for enforcement of fish and wildlife laws, and to use appropriations to pay for rewards and undercover operations.

Fish and Wildlife Conservation Act of 1980, as amended, (16 U.S.C. 2901–2911, commonly known as the Nongame Act) encourages states to develop conservation plans for nongame fish and wildlife of ecological, educational, aesthetic, cultural, recreational, economic, or scientific value. The states may be reimbursed for a percentage of the costs of developing, revising, or implementing conservation plans approved by the Secretary of the Interior. Amendments adopted in 1988 and 1989 also direct the Secretary to undertake certain activities to research and conserve migratory nongame birds.

Migratory Bird Treaty Act of 1918 (16 U.S.C. 703–711) manages and protects migratory bird species through consultation with state and local governments and protection of land and water resources necessary for the conservation of migratory birds. Under the Act, taking, killing, or possessing migratory birds is unlawful.

The Sikes Act of 1960 (16 U.S.C. 670a–670o), as amended, Public Law 86-797, provides for cooperation by the Departments of the Interior and Defense with state agencies in planning, development, and maintenance of fish and wildlife resources on military reservations throughout the United States. Public Law 93-452, signed in 1974, authorized conservation and rehabilitation programs on BLM lands. Public Law 97-396, approved in 1982, provided for the inclusion of endangered plants in conservation programs developed for BLM lands. It also defined “cooperative agreements” with states and clarified section 209 concerning purchases and contracts for property and services from states.

WILD HORSES

The Wild Free-Roaming Horses and Burros Act of 1971 (Public Law 92-195) was amended as follows: Sections 1332 and 1333 were modified by the Public Rangelands Improvement Act of 1978 (Public Law 95-514); Section 1338 was modified by the Federal Land Policy and Management Act of 1976 (Public Law 94-579); the Omnibus Parks and Public Lands Management Act of 1996 (Public Law 104-333) added Section 1338a.; and Section 1333 was again modified by the Fiscal Year 2005 Omnibus Appropriations Act (Public Law 108-447). As amended, the Act guides the management of horses by BLM both while on the range and during and after removal from the range.

Regulations at 43 CFR 4700 provide more detailed direction.

In addition, a consent decree entered into between the Bureau of Land Management and the State of Wyoming on August 28, 2003, in United States District Court in Civil Action No. 03-CV-169-D, further directs management in the entire state and, within that, the RFO. The consent decree directs that Wyoming BLM will use its best efforts to achieve and maintain previously established Appropriate Management Levels (AML) in all Herd Management Areas (HMA) in the state, including those in the Resource Management Plan Planning Area (RMPPA).

RELATIONSHIP WITH OTHER PLANS

BLM land use plans and amendments must be consistent with officially approved or adopted resource-related plans of Native American tribes, other federal agencies, and state and local governments to the maximum extent practical, given that BLM land use plans must also be consistent with the purposes, policies, and programs of FLPMA and other federal laws and regulations applicable to public lands (43 CFR 1610.3-2 [a]).

If these other entities do not have officially approved or adopted resource-related plans, BLM land use plans must, to the maximum extent practical, be consistent with their officially approved and adopted resource-related policies and programs. This consistency will be accomplished as long as BLM land use plans are consistent with the policies, programs, and provisions of public land laws and regulations (43 CFR 1610.3-2 [b]).

Section 368 of the Energy Policy Act of 2005 (designation of West-wide energy corridors) is being implemented through the current development of an interagency programmatic EIS. The final programmatic EIS will provide plan amendment decisions that will address numerous energy corridor related issues, including the utilization of existing corridors (enhancements and upgrades), identification of new corridors, supply and demand considerations, and compatibility with other corridor and project planning efforts. It is likely that the identification of corridors in the project EIS will affect the Casper RMPPA, and the approved PEIS would subsequently amend the Casper RMP.

This draft EIS, with its associated descriptions of planning alternatives, is being distributed to other federal agencies, state and local governments, and Native American tribes to provide them the opportunity to identify where specific inconsistencies may exist, and to suggest ways to resolve them.